Supreme Court, U.S.
FILED
06-649 AUG 22 2006
OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

William McKinley –Petitioner

vs.

Ohio Industrial Commission Respondent(s)

ON PETITION FOR A WRIT OF CERTIORI TO

Ohio Supreme Court

PETITION FOR WRIT OF CERTIORI

William McKinley, pro se
5460 C. R. 35
Ada,Ohio 45810
419-634-7556

QUESTION(S) PRESENTED

1. Why did the Attorney General who represented the Ohio Industrial Commission at the Court of Claims issue a Waiver of Memorandum, refusing to send the information about the case to the Ohio Supreme Court, thus hiding evidence?
2. Why did the Supreme Court not request the information the Attorney general did not send?
3. Why did the Ohio Supreme Court not remedy the failure of the Court of Claims to hear my case?
4. Why did the Ohio Supreme Court not remedy the refusal of the OIC to pay me for the time I was off for my shoulder injury that occurred at work
5. Why did the Ohio Supreme Court overlook the effect of Disparate Impact on my financial status , as cited by Vol. 544-U.S. page 28 Smith vs City of Jackson ?
6. Why was my demotion and the promotion of a younger person (a federal offense since 1974) overlooked by the Court?

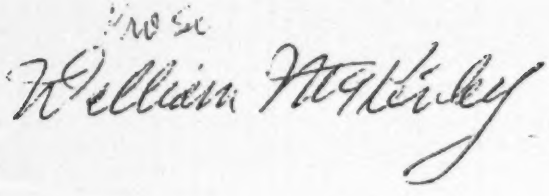
William McKinley Pro Se

Signed: William McKinley
Pro Se

PARTIES TO THE PROCEEDINGS

All parties appear in the caption of the case on the cover page.

Signed: William McKinley



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Signed : William McKinley pro se

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CASES PAGE NUMBER

1. U. S. Supreme Court Docket , Vol. 544, US page 228 S. C. 1536
2. U. S. District court, State of Illinois case 1:05-cv-04889

STATUTES AND RULES

1. Ohio Civil Rights Commission 4112.02-4112.99
2. Ohio Revised Code 4112.14 Labor & Industry
3. Employee Retirement Income Security Act of 1974 507 U. S.-612 as amended
4. Employment Act of 1967~4(a) (1,2),29 U.S.C.A. ~623 (a) (1,2)

IN THE

SUPREME COURT OF THE

UNITED STATES

PETITION FOR WRIT OF

CERTIORI

Petitioner respectfully prays that a writ of certiori Issue to review the judgement below.

OPINIONS BELOW

(X) For cases from state courts

The opinion of the highest state court to review the Merits appears at Appendix A to the petition and is (X) unpublished.

The opinion of the State Court of Appeals appears At Appendix C to the petition and is (X) unpublished.

JURISDICTION

(X) For cases from state courts

The date on which the highest state court decided my case was June 7,'2006. A copy of that decision appears at Appendix A.

The jurisdiction of this court is invoked under 28 U. S. C. & 1257 (a)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1.In my case, the Ohio Supreme Court has made a decision that conflicts with the U. S. Supreme Court ruling in the case of Smith vs. the City of Jackson (MISSISSIPPI) Docket No. 03-1160 Vol. 544 U. S. page 228.

2. The United States District Court , Northern District of Illinois is now considering a class action lawsuit involving overtime pay for employees. It is Vennet et al. Vs American Intercontinental University Online et al. (Subsidiary of Career Education Corporation) . This lack of overtime pay was due to injuries and downsizing. Case No. 1:05-CV-04889

3.The failure to pay back pay damages owed to me, on the part of the Ohio Industrial commission is actionable under Employee Retirement Income Security Act of 1974 507 U. S. 604-618.

4. Age Discrimination is forbidden by the Employment Acts of 1967~4(a) (1,20, 29 U. S. C. A. ~623(a)(1,2)as amended

5. The Waiver of Memorandum response by the Attorney General's office is withholding of evidence. Case No, 2005-09103, Court of Claims.

Signed: William McKinley pro se

William McKinley Pro Se

STATEMENT OF THE CASE

U. S. Supreme Court has ruled (Smith VS City of Jackson) Docket No. 03-1160 Vol. 544 U. S. page 228) that people entering retirement age need extra defense against discrimination. My case involves pay and age discrimination by demotion, as well as needing to be paid for time off as the result of an injury in the plant. . The refusal of the Ohio Supreme court to accept my case is a violation of the U. S. Supreme Court ruling on Disparate Impact.

There has been disparate impact on me by the Ohio Industrial Commission not paying me after my injury and time off. This was allowed by the Ohio Supreme Court's decision to not hear my case.

In talking to OIC hearing Officer David McGill, I explained that I had had 46 weeks off following my injury and he said the amount I would be eligible to receive was according to a set formula. When I asked about the formula, I was told he was not allowed to give me legal advice. Being told what the "formula was does not seem to be legal advice. It seems to be something I had the right to know.

After I reported evidence of harassment to the Ohio State Civil Rights Commission in Dayton Ohio, My employer downgraded me from toolroom instructor to toolmaker, against the U. S. Supreme Court decision. Ohio Civil Rights Commission rule 4112.02 does not apply because I withdrew my complaint to them, although all jurisdictional requirements for filing had been met.

In the case of James O'Brien VS Ohio State University in the Court of Claims, an Ohio Judge ruled he "violated his contract with Ohio" , but then awarded him $2.2 million out of Ohio Industrial Commission assets. This was case No. 2004-10230.

However, the Ohio Courts refused to even hear my case, after I was told by

Assistant Attorney General Stephanie D. Pestello-Sharf, Court of Claims, that I should file in the Ohio Appeals Court. The acceptance of Coach O'Brien's case, and the refusal of the courts to hear my case, is another instance of Disparate impact.

Signed: William McKinley
Pro Se

William McKinley
Pro Se

REASONS FOR GRANTING THE PETITION

I am exercising my right to appeal the Ohio Supreme Courts ruling to the U. S. Supreme Court. It is my understanding that the U. S. Supreme court will not retry based on the facts of the case , but rather on procedural errors during the trial itself. (a)

(1) The court has the discretion to decide if it will review a case. The courts have so far declined to review my case, although there have been substantial reasons for a review. My case presents an issue of "public or great general interest." The general public has the right to be assured that the Ohio Supreme Court and other Ohio Courts are not favoring the more wealthy and highly situated people. It seems this is what is happening here in Ohio. The Ohio State Coach O'Brien not only had his day in court, but was awarded $2.2 million from the Ohio Workers' Comp. Funds. This was after he had been fired.

(2) I was not even allowed a hearing. I am pro Se. Does being pro se mean I have less right to be heard than some one who has a high-powered (high-paid) lawyer? The fact that the Ohio BWC has a huge surplus of money that has NOT been paid out tells me that I am not the only injured worker whose needs have not been met. This alone makes my case one of " great general interest to the public."

(3) Another reason I am asking for a chance to be heard is the Waiver of Memorandum sent to the Ohio Supreme Court when I was appealing to them. The Ohio Attorney General of the Court of Claims , who represented the OIC, refused to send the transcript of the Case to the Ohio Supreme Court. This is suppressing evidence and should be grounds for a new trial. They must be trying to hide something.

(4) According to the recent U. S. Supreme Court ruling Smith VS City of Jackson, retired workers need protection of the assets they have accumulated during 50 years of work. The Court needs to stand behind its ruling and I am asking them to do that by giving me a hearing in the Ohio Supreme Court.

(a) OSU Extension Agricultural Law Newsletter Feb. 2001 " Generally, the court will review the decision if it presents an issue of *public or great general interest*".

"A federal review would occur only if the case concerns an issue of federal importance, such as a violation of a constitutional right or *interpretation of a federal law."* (such as mentioned above in item (4)

Signed: William McKinley
Pro Se

William McKinley
Pro Se

CONCLUSION

The petition for a writ of certiori should be granted.

Respectfully submitted,

William McKinley Pro Se

William McKinley
Pro Se
5460 C. R. 35 Ada,Ohio 45810
phone 419-634-7556

Date October 31 2006

10-31-200

Susan L. Thompson

SUSAN L. THOMPSON
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires 03-11-20

The Supreme Court of Ohio

FILED
Jun 07 2006
Marcia J. Mengel
Supreme Court of Ohio

William McKinley
Vs.
Ohio Industrial Commission

Case No. 06-594

ENTRY

Upon consideration of the jurisdictional memoranda filed in this case, the court declines jurisdiction to hear the case and dismisses the appeal as not involving any substantial constitutional question.

(Franklin County Court of Appeals; No. 05AP1283

" S/Thomas J. Moyer Chief Justice"

STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
JIM PETRO,ATTORNEY GENERAL

COURT OF CLAIMS DEFENSE
SECTION, 150 E. Gay St. 23rd floor
Columbus ,Ohio 43215
Telephone (614-466-7447
Fax: 614-644-9185
www.ag.state.oh.us

April 6,2006

William McKinley
5460 C. R. 35
Ada, Ohio 45810

Re: William McKinley v. Ohio Ind. Commission
Court of Claims Case No. 2005-09103

Dear Mr. McKinley:

Enclosed please find a copy of the Waiver of Memorandum in Response that was filed with the Supreme Court of Ohio in the above-captioned case.

Please feel free to contact me of you have any questions regarding this matter.

Sincerely,
JIM PETRO
Attorney General of Ohio

Stephanie Pestello/Sharf/vam
STEPHANIE PESTELLO_SHARF
Assistant Attorney General
Court of Claims Defense
(614)-466-7447

SPS/vam
Encl

IN THE SUPREME COURT OF OHIO

WILLIAM MCKINLEY Case No. 06-0594
v.
INDUSTRIAL COMMISSION

Waiver of Memorandum in Response*

I am filing this waiver pursuant to S. Ct. Prac. R. III, Section 2(E). I do not intend to file a response to the memorandum in support of jurisdiction unless one is requested by the court.

Stephanie Pestello-Sharf 150 E. Gay St. 23rd floor
Name address
0022923 Columbus, Ohio
Attorney Reg. No. city state
(614-466-7447 43215
phone No. zip code

Please enter my appearance as follows(check one)
(x) Enter my appearance a counsel of record for all appellees.

I certify that I am sending a copy of this form, on this date, to all other parties in compliance with S. Ct. Prac. R. XIV, Section (2B).

"S/Stephanie Pestello-Sharf" signature
April 4,2006 date

*note: If a waiver is filed in lieu of a memorandum in response, it must be filed within 20 days after the memorandum in support of jurisdiction is filed. If there are multiple appellants and more than one memorandum is filed, the appellee may file only one waiver, and it must be filed within 20 days after the filing of the last memorandum in support.

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

FILED
COURT OF APPEALS
FRANKLIN CO. OHIO
2006 FEB 7 PM 3:46
CLERK OF COURTS

William McKinley
Plaintiff
Appellant
v.
Ohio Industrial
Commission
Defendant-Appellee

JOURNAL ENTRY OF DISMISSAL

On Jaan 18,2006, this court entered an order strikling the brief of appellant and providing appellee leave until Jan. 24,2006 to file a proper brief. Appellant has not filed a corrected brief which complies with App. R. 16 and Loc. R. 7. Accordingly, this appeal is sua sponte dismissed for failure of appellant to file a proper brief.

"S/Judge Peggy Bryant "
"S/ Judge Charles R. Petree"
"S/ Judge Patrick M. McGrath'

Ohio Civil Rights Commmssion

Oct. 10,2002

William McKinley
5460 Co. Rd. 35
Ada, Ohio 45810

Dan O'Neill, Labor Relations
Ford Motor Company
1155 Bible Rd.
Lima, Ohio 45801

SUBJECT: William McKinley v Ford Motor Co
(DAY) A6080702(15566648) 082902: 22A 04010

The Charging party, William E. McKinley has filed an affidavit with the Ohio Civil Rights commission, alleging he was harassed and subjected to dirrerent terms and conditions of employment by Respondent, Ford Motor Co.

All jurisdictional requirements for filing a charge have been met.
Charging party executed a Withdrawal of Charge form because he does not wish to pursue this matter with the Ohio Civil Rights Commission .
The Ohio civil Rights Commssion has determined that no purpose would be served by continuing this matter and has made a finding of WITHDRAWAL OF CHARGE-GRANT.

Orthopaedic Institute of Ohio
801 Medical Drive Lima, Ohio 45804
Tel. 419-222-6622 1-800-225-3921
Fax (419)-224-0015 www.orthoinstohio.com

Jan 10,2001

NAME: WILLIAM MCKINLEY DOB:12/9/38

To Whom It May Concern:

This letter is written to you on behalf of Mr. William McKinley.
Please be advised that Mr. William McKinley did a lot of repetitive overhead work for a number of years leading to chronic impingement syndrome and A/C arthritis in his right shoulder. He subsequently underwent open anterior pseudo acromionectomy and resection distal clavicle and A/ C osteophytes in treatment of this problem on Nov. 5th, 1998.

He has been advised to continue to avoid repetitive overhead use of his shoulder for the rest of his life.

In my opinion, his repetitive overhead work has been a substantial contributor to his shoulder problems.
Thank you.
Sincerely,
"S/Roger L. Terry,M. D. "
Orthopaedic Institute of Ohio
RLT/ca

Statement of Jerry McDonald

I, Jerry McDonald, had a medical restriction of not standing for more than 4 hours at a time, from Dr. Robert Dixon. But if I took a break, Darren Verhoff ;would immediately demand that I return to work. Mr. Verhoff had replaced John Jordan as supervisor ot toolmakers in Sept. of 2000, and I had no problem with John Jordan.
I retired June 1,'02. Ford never paid me for my overtime pay that they had denied me for years.

Signed: "s/Jerry Lee McDonald
Dated: 8/30/02

Sworn to before me and subscribed in my presence this 30th day of August,2002.

"s/Penney R. Gerdeman

Penney R. Gerdeman
Notary Public
Commission Expires 3/20/07

OSU Extension Agricultural Law
Newsletter February 2001

Judicial System

What legal rights does a party have if he or she disagrees with the outcome of his or her court case?

In most cases, a party has the right to appeal a court decision to a higher court. In Ohio, a party appeals a decision of a Common Pleas, a Municipal or County Court to the appropriate Court of Appeals. There are 12 appellate courts in Ohio, each composed of a three judge panel. The panel reviews the lower court's decision and either confirms or reverses the decision. The appellate court will not "retry" the case by reviewing the facts, but will review any legal or procedural errors raised by the appealing party. If the appealing party disagrees with the Ohio Court of Appeals' decision, the party may ask the Ohio Supreme Court to review the case. The Ohio Supreme Court must review certain cases, such as one requiring an interpretation of the Ohio constitution, but in most cases the court has the discretion to decide whether it will review a case. Generally, the Court will review the decision if it presents an issue of "public or great general interest". The Ohio Supreme Court is termed the "court of last resort" in Ohio, since it is the state's highest court. The only avenue of recourse after the Ohio Supreme court would be a review by a federal court such as the united States Supreme Court. A federal review would occur only if the case concerns an issue of federal importance, such as a violation of a constitutional right, or interpretation of a federal law.

In addition to the right of appeal, a party may have other grounds for seeking relief from a court decision. Where injustices occur, such as tampering with evidence, bribing of coercing jurors or witnesses, or hiding evidence, the injured party may be able to obtain a new trial or have the decision vacated.

Property Law

What is adverse possession?

Historically, referred to as Squatter's rights, adverse possession is the acquisition of real property by hostile possession of the poroperty for a certain period of time. In Ohio, a party can make a legal claim to property if the party continuously possesses the property for a period of 21 years and does so openly, without the landowner's permission and adverse to the owner's interests. In effect, if the landowner does not assert the rights within 21 years of the time that another party takes possession of the land.

While a party may claim title to land by adverse possession, the claim is not legally recognized unless declared valid by a court of law. However, Ohio courts disfavor the doctrine of adverse possession, because it forces a landowner to forfeit ownership of the land. For this reason. The burden of proof upon a party claiming rights by adverse possession is rigorous. The court will agree with the claim only if the party clearly proves that each of the following elements existed for a period of 21 years:(1) exclusive possession of the land 2) open use of the land 3) notorious use (i.e. notable to others) 4) continuous possession of the land and 5) adverse possession of the land(that is, adverse to the landowner.) As stated by the Vermont Supreme Court, " The tenant must unfurl his flag on the land, and keep it flying so that the owner my see, if he will, that an enemy has invaded his dominions and planted his standards of conquest."

If a claimant does establish the required elements of adverse possession, the legal title to the property transfers when the court makes its entry declaring that adverse possession exists. A written deed transferring the property is not necessary.

See Grace vs. Koch (1998) Ohio St. 3d 577, a recent decision by the Ohio Supreme court describing the requirements for adverse possession in Ohio.

Prepared by Peggy Kirk Hall, Legal Educator

tained in your application for benefits conforms to your statement in the application for Workmen' compensation. A difference in the statements in the Workmen's compensation application and the sick Benefits application could be used by the company to discredit your claim before the Bureau.

Persons Entitled to Compensation

The following persons are entitled to Workmen's Compensation in Ohio:

1.Any worker injured in the course of , and arising out of His employment.

2. Any worker disabled by an occupational disease in the course of his employment.

3. Dependents of workmen killed in the course of employment where death resulted from injury or disability received on the job.

Effects of Negligence or Fault on Compensation

A worker is entitled to Workmens Compensation even though the accident resulting in his disability was caused by his own negligence or fault. It is important to remember that fault is immaterial in the determination of compensation right.

However, a worker will not receive compensation for injury purposely self-inflicted, or for injury resulting from "horseplay."

What is meant by "In the course of and arising out of Employment?"

An injury to be compensable need not necessarily Occur at the worker's machine, or in the performance of his specific assignment.

An injury, to be compensable, need not necessarily general"sphere of the employment". Any injury which occurs on the premises r in the plant is compensable.

No matter how unusualand removed from the worker's specific job an accident may seem, do not assume that it is not compensable under the law.

Aggravation of a pre-existing disability is compensable under the law. A worker is entitled to compensation even though the injury suffered on the job aggravated a pre-existing disability or disease.

Time Limitations for filing of Claims

All claims are barred and compensation denied unless a timely application is filed with the Bureau of Worker's Compensation within the time limits indicated below.: